



Approved as amended June 30, 2011

MINUTES

**City of Scottsdale
JUDICIAL APPOINTMENTS ADVISORY BOARD
Regular Meeting
6:00 p.m., Thursday, June 2, 2011
Human Resources Pinnacle Training Room
7575 E. Main Street**

PRESENT: Paul Rybarsyk, Chair
Donald Alvarez, Vice Chair
Dr. Ira Ehrlich
Judge Jean Hoag
Judge John Rea
Francis Scanlon
Kenneth Weingarten

STAFF: Valerie Wegner
Judy Dewey
Sherry Scott
Terry Welker

OTHERS: Janet Cornell, Court Administrator
City Judge B. Monte Morgan
Judge Joseph Olcavage

CALL TO ORDER

The meeting was called to order at 6:06 p.m.

ROLL CALL

A formal roll call confirmed the presence of a quorum as noted above.

1. APPROVAL OF MINUTES OF PUBLIC MEETING CONDUCTED ON APRIL 21, 2011

Vice Chair Alvarez suggested striking the phrase "in 30 years," from the first paragraph of page 5.

VICE CHAIR ALVAREZ MOVED TO APPROVE THE MINUTES OF THE APRIL 21, 2011 PUBLIC MEETING AS AMENDED. BOARD MEMBER SCANLON SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

2. APPROVAL OF THE EXECUTIVE SESSION MINUTES OF PUBLIC MEETING CONDUCTED ON MARCH 24, 2011

BOARD MEMBER HOAG MOVED TO APPROVE THE MINUTES OF THE MARCH 24, 2011 EXECUTIVE SESSION AS PRESENTED. VICE CHAIR ALVAREZ SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

3. PUBLIC COMMENT

Janet Cornell, Court Administrator, expressed her support for the reappointment of Judge Joseph Olcavage. She described him as a seasoned, experienced judge who has been with the Court for over 20 years. He currently presides over jury trials, trials to the bench, domestic violence cases, in custody court, probation revocations, and telephonic pleas. Judge Olcavage also has an active arraignment calendar and handles walk-ins. In a typical calendar year, he handles on average from 12,000 to 14,000 different settings. Over his tenure he has probably seen over 260,000 different hearings and court settings. His rate of appeals is fairly low. In 2010, he had an average number of notices of change of judge. Ms. Cornell said Judge Olcavage deserves reappointment because of his experience. He is a colleague to the other judges and to the staff. He has instructed other judges, and has served as a mentor judge with the Judicial College.

Ms. Cornell welcomed questions from the Board. Board Member Ehrlich inquired about the average number of notices of change of judge in a typical year. Ms. Cornell explained that Judge Olcavage had 17 notices of change of judge in the past calendar year, which is about average. Only seven different lawyers filed those notices, and attorneys sometimes use these filings as a tactic. She stated that the number of notices of change of judge is no reason at all to be concerned.

Board Member Scanlon inquired about Judge Olcavage's appeal rate. Ms. Cornell responded that in calendar year 2010, 21 appeals were filed on cases from his courtroom; seven were affirmed, none reversed, seven abandoned, and six are still in process.

Judge B. Monte Morgan, Presiding Judge, recommended the reappointment of Judge Olcavage, and said Judge Blake and Judge Jejna also wanted to express their support, but weren't able to be present. He said Judge Olcavage is one of the most experienced judges in the state. He was a prosecutor before becoming a judge. He teaches at the new judge orientation for limited jurisdictions, teaches new pro tem judges in Scottsdale, and has been helpful in many different ways.

Judge Morgan said he has the highest respect for Judge Olcavage. He stated that ten defense attorneys have indicated to him that the notices of change of judge they filed were not directed towards Judge Olcavage; they were directed at a zealous prosecutor who is assigned to his court. He said Judge Olcavage has the best demeanor in the Court. Domestic violence cases are tough assignments. The Court sees a tremendous number of them, and Judge Olcavage has handled them successfully for a long time.

Chair Rybarsyk inquired whether anyone has made disparaging remarks about Judge Olcavage that should be taken seriously. Judge Morgan said he has never heard anything disparaging about Judge Olcavage in the 12 years he has been the Presiding Judge. Vice Chair Alvarez inquired whether Judge Olcavage tends to favor either the prosecution or the defense. Judge Morgan responded that he rules very fairly.

Vice Chair Alvarez said that all the attorneys he interviewed gave high ratings to Scottsdale's Court, compared to other courts in the Valley. This is a testament to Judge

Morgan, the other judges and the staff. Judge Morgan said the Court works hard to strive for a better judiciary. The Court sees so many people and it is difficult to maintain its user-friendliness. The Board thanked Judge Morgan for his service to the city.

Ms. Wegner noted that staff received no written public comments on Judge Olcavage.

4. DISCUSSION OF JUDICIAL SURVEY RESULTS ON ASSOCIATE CITY JUDGE JOSEPH OLCAVAGE

Board Member Ehrlich noted that the set of survey scores on Judge Olcavage was impressive, containing many eights and nines. Board Member Scanlon said the scores indicate no area of weakness; they are superb across the board.

5. DISCUSS THE BOARD'S GENERAL DELIBERATIVE PROCESS REGARDING JUDICIAL APPOINTMENTS; DISCUSS THE OPEN MEETING LAW AND ETHICS CODE, INCLUDING THE LIMITED USE OF EXECUTIVE SESSIONS; DISCUSS AND CONSIDER THE BOARD'S PRACTICE TO MOVE INTO EXECUTIVE SESSIONS TO DISCUSS CONFIDENTIAL RECORDS/INFORMATION RELATED TO JUDICIAL PERFORMANCE; AND DISCUSS, CONSIDER, AND TAKE POSSIBLE ACTION REGARDING WHETHER SOME GENERAL DISCUSSION COULD TAKE PLACE DURING THE OPEN MEETING WITHOUT REVEALING ANY CONFIDENTIAL INFORMATION.

Ms. Scott noted that Vice Chair Alvarez requested this agenda item to discuss the Board's process, and whether to continue the practice of moving into executive session to discuss individual comments in more detail. One alternative would be to discuss them more generically in the public meeting so as not to breach confidentiality. The Ethics Code asks that public officials and board members limit the use of executive sessions, reserving them only for compelling circumstances.

Vice Chair Alvarez suggested that the Board could give a general description of what people said during the due diligence interviews, without revealing their names. That would satisfy any particular confidentiality. Oftentimes the interviewees do not care, but in some cases they do. Board Member Ehrlich felt that discussions during open meetings would not hurt the Board's purpose at all. The confidential surveys reveal no names, though the lists that Board Members fill out do contain them. He inquired what happens to these lists. Ms. Wegner indicated that they are shredded.

Chair Rybarsyk expressed his concern that in some cases, definitive comments could link the circumstances of a situation to a specific person. If attorneys are to be open with the Board, they have to be able to feel certain that their comments are truly confidential. The Board has to honor requests to keep comments confidential when asked.

Board Member Scanlon said each judge reappointment is different, and suggested that the Chair determine whether executive sessions are necessary on a case by case basis. Vice Chair Alvarez clarified that the Mayor did not ask JAAB to eliminate executive sessions, merely to limit their use to situations where they are really needed, erring on the side of public disclosure.

Board Member Weingarten said he would rather err on the side of confidentiality. Scottsdale is still a pretty small place, and it is not that difficult to surmise who said something. Chair Rybarsyk suggested that the interviewers always ask attorneys whether they want to have their comments kept confidential or not. If they request

confidentiality, their comments should be discussed only in executive session. Open meeting discussions do not have to reveal the name of the person making the comment in any case.

Board Member Hoag said transparency would make City Council's job easier, but the lawyers do not want to jeopardize their reputations in the courtroom. JAAB has to walk a fine line between these competing interests. The Mayor made a legitimate request, but the Board cannot jeopardize their role. Board Member Ehrlich said it would only take one bad occurrence for attorneys to decide never to grant interviews to JAAB again. Board Member Weingarten suggested the JAAB do their due diligence openly, and only reserve the sensitive comments for executive session.

Ms. Scott noted a provision in the executive session statute that allows the Board to go into executive session for discussion of personnel issues. The problem is that it provides the employee being discussed with the option of requesting that the discussion be held during a public meeting. That provision does not really help when the Board is dealing with discussions of confidential information. The JAAB process as outlined in the City Code does not require that they go into executive session, and does not require confidentiality. It does say that Rule 6 of the State of Arizona Supreme Court Rules of Procedure for judicial review, process and dissemination of findings can be used as a guide, and that has been the historical practice. It is for JAAB to decide how to handle this.

Ms. Scott clarified that while anything discussed in executive session is kept confidential; documents brought into executive sessions do not automatically have confidentiality attached to them. It would not be appropriate for JAAB to come out of an executive session and generally summarize what was discussed. JAAB instead should discuss confidential records in executive sessions, and then in the public meeting have a very general discussion of the findings from the comments.

Chair Rybarsyk moved that JAAB adopt a policy that when conducting due diligence interviews on the reappointment of any judge of the Court, that interviewees are expressly given the option to keep their comments confidential. Board Member Weingarten seconded. Judge Rea suggested an amendment saying that interviews should be presumed confidential unless permitted otherwise. Board Member Scanlon said he would prefer that the interviewees be told that the discussion will be confidential unless they want it otherwise. Board Member Ehrlich agreed.

Judge Rea said the motion would not prevent Board Members from beginning the interviews with a confidentiality statement, but would provide the flexibility to ask the interviewees if it is okay to share important information in an open meeting.

CHAIR RYBARSYK MOVED THAT JAAB ADOPT A POLICY THAT WHEN CONDUCTING DUE DILIGENCE INTERVIEWS CONCERNING THE APPOINTMENT OR REAPPOINTMENT OF ANY SCOTTSDALE CITY JUDGE, THE INTERVIEWS ARE PRESUMED TO BE CONFIDENTIAL. THE JAAB MEMBERS WHO CONDUCT THE INTERVIEWS MAY ASK THE INTERVIEWEES WHETHER THEY WANT TO KEEP THE INFORMATION CONFIDENTIAL OR IF THEY WOULD BE WILLING TO GRANT PERMISSION TO DISCUSS THEIR RESPONSES IN OPEN MEETINGS. VICE CHAIR ALVAREZ SECONDED. THE MOTION CARRIED BY A VOTE OF SIX (6) TO ONE (1) WITH BOARD MEMBER SCANLON DISSENTING.

Board Member Weingarten requested a discussion on extending the time frame for due diligence to include anyone who has appeared before the judge over a six-month period, rather than just three months. Ms. Wegner clarified that currently both the due diligence interviews and the surveys include anyone who has appeared before the judge in the previous three-month period. The due diligence interviews could be extended to include anyone who appeared before a judge in the previous six months, while the surveys are kept to three months.

Board Member Hoag questioned how the extension would benefit the process. Board Member Weingarten responded that the due diligence lists contain many attorneys who have appeared before the judges only once. Board Member Ehrlich suggested eliminating attorneys who have only appeared once before a particular judge if the purpose of the extension is to get people who have had more experience with the judge. Ms. Wegner said an extension to six months should result in a longer list of attorneys who have appeared before a judge multiple times.

The Board agreed by consensus to direct staff to include due diligence input from attorneys who have appeared before a judge over the previous six months, regardless of the number of times they appeared. Ms. Wegner said the Board does not have to contact every attorney that appeared during that time, but they would just have the option to do so. Chair Rybarsyk noted that the Board is not limited to the people on the list for their due diligence interviews.

6. DISCUSSION OF CONFIDENTIAL RECORDS AND CONFIDENTIAL INFORMATION RELATED TO JUDGE OLCAVAGE'S PERFORMANCE OR REAPPOINTMENT

CHAIR RYBARSYK MOVED TO ENTER INTO EXECUTIVE SESSION. BOARD MEMBER SCANLON SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

The Board entered into executive session at 6:54 p.m. and reconvened into the public meeting at 7:22 p.m.

7. DISCUSS QUESTIONS FOR INTERVIEW OF JUDGE OLCAVAGE

The Board had no questions to discuss prior to their interview of Judge Olcavage.

8. INTERVIEW OF JUDGE OLCAVAGE

Judge Olcavage said he has been a Scottsdale Judge since the summer of 1991. Everyone who enters the court is different, and they each have their own expectations and understandings of the legal system. He specializes in jury trials that can be finished in one day, including the jury selection process.

Chair Rybarsyk asked whether the workload has increased since the Court shrank to only four judges. Judge Olcavage responded that he has taken over the arraignments that Courtroom 5 used to handle. All the judges had to absorb extra work. Chair Rybarsyk inquired whether Judge Olcavage was the only judge that handled domestic violence cases. Judge Olcavage said he was until a few months ago when Judge Morgan took part of the domestic violence calendar to help out. Judge Jejna also picks up a few trials. Domestic violence cases are probably the most frustrating, yet the most rewarding assignments. They are one of the few times that the judge gets to see people making progress. Part of his job is to try to get them not to come back to court.

Chair Rybarsyk inquired whether the general Court disposition is to assign people to a domestic non-violence program. Judge Olcavage responded that those who are convicted of a domestic violence designated offense have to go through the program on their first offense. State law requires a minimum of 26 weeks and as many as 52 weeks of the program. Upon a second conviction, a judge would have the authority to assign people to other programs, as appropriate.

9. DISCUSSION AND REAPPOINTMENT RECOMMENDATIONS REGARDING JUDGE OLCAVAGE

VICE CHAIR ALVAREZ MOVED TO RECOMMEND REAPPOINTMENT OF JUDGE JOSEPH OLCAVAGE. BOARD MEMBER HOAG SECONDED. THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).

Chair Rybarsyk appointed Vice Chair Alvarez to be the emissary from JAAB to the Council to discuss reappointment of Judge Olcavage.

10. FUTURE AGENDA ITEMS

Board Member Weingarten inquired about the possibility of online surveys for appointments and reappointments. Ms. Wegner said staff is exploring the possibility and offered to report to the Board at the next meeting.

Mr. Welker noted that the Board previously tabled the issue of term limits for judges. He noted that the term limit issue may cloud any one of the three reappointment processes, and suggested that the Board deal with the issue once that process concludes, but before the Presiding Judge appointment process begins.

Ms. Wegner noted that the next Board meeting would be held on June 30. Judge Jean Hoag mentioned that she sits on the Board as a representative of the Superior Court, but is retiring as of June 28th. Her Board term ends on July 8. Ms. Wegner said one of the items for the June 30 meeting is the timeline for the recruitment of the Presiding Judge. JAAB would not have to convene for that process until a replacement is seated. Judge Jean Hoag said she has already asked Judge Davis to select another judge for JAAB. Ms. Wegner said the City Council would ultimately have to approve the appointment before it is official.

Chair Rybarsyk said his term on JAAB would expire before the end of the recruitment process to find a new Presiding Judge. Ms. Scott suggested that this issue be added to the next agenda for discussion.

ADJOURNMENT

With no further business to discuss, being duly moved and seconded, the meeting of the Judicial Appointments Advisory Board adjourned at 8:01 p.m.

Respectfully submitted,
Valerie Wegner
HR Office Coordination Manager

Reviewed by,
Paul Rybarsyk
JAAB Chairperson